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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3709 OF 2003
IN
SUIT NO.3957 OF 2003

Maniben Kalyanji Gada & Ors. ... Plaintiffs

V/s.

P.R. Enterprises & Ors. ... Defendants

Ms.S.Srikrishna with Mr.Narayanan for Plaintiffs
None for Defendants

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 16, 2006**

P.C.:

. By an order dated 19.5.2004, this Court had recorded the statement on behalf of the defendants that Defendant Nos.2 and 3 would not alienate, dispose of or create any third party rights in respect of the two suit flats which are the subject matter of the present Motion. The Plaintiffs now seek appointment of Court Receiver in respect of the suit property, amongst other reliefs.

2. It appears that an ejectment suit was filed by Defendant No.1 against Kalyanji Kunwarji Gada, who was the father of Defendant No.2, who has filed the affidavit in support of the Motion on behalf of all the plaintiffs. Consent terms were filed in that suit on 14.11.1994. Under the consent terms, Defendant No.1 agreed and undertook to construct a new building on the property after demolishing the old building in which the

Plaintiff No.2's father had a shop. Defendant No.1 agreed to allot shop No.14 in the new building on a monthly tenancy as a permanent alternate accommodation, with the option to the erstwhile tenant to convert it to an ownership premises on payment of Rs.10,000/- within a year of signing the consent terms. Defendant No.1 also agreed to sell to Plaintiff Nos.3 and 5 two flats on the 3rd floor in the building. As the building plans were sanctioned only in 1998, a supplementary set of consent terms were filed in the suit on 24.11.1998. It was agreed between the parties that flat No.A3 would be sold to plaintiff No.2's brother and flat No.B2 to his wife in the proposed building, each admeasuring 868 sq.ft. built up area, on ownership basis. The Plaintiffs were required to pay consideration of Rs.10 lacs per flat on a lumpsum basis. Defendant No.1 agreed to execute the agreement of sale in respect of the ownership flats as contemplated under section 4 of the Maharashtra Ownership of Flats Act. 5% of the Consideration was to be paid within a month of signing the supplementary consent terms and the balance on obtaining possession after the occupation certificate for the building was secured from the Municipal Corporation. Accordingly, the plaintiffs have paid Rs.50,000/- per flat and are ready and willing to pay the balance price of Rs.9.5 lacs per flat against possession. It appears that the plaintiffs' father vacated the old shop and a new building has been constructed after much delay. Defendant No.1 refused to give possession of the new

shop No.14 to the father of Plaintiff No.2. Contempt proceedings were adopted in the Small Causes Court at Bombay against Defendant No.1 for breach of the undertakings in the consent terms. After the death of Plaintiffs' father, Defendant No.1 took out a notice before the Small Causes Court to relieve him from the undertakings given in the consent terms. This notice was discharged and Defendant No.1 agreed to put the plaintiffs in possession of the shop No.14. Accordingly the possession of these new shop premises has been handed over to the plaintiffs.

3. The present suit has been filed for specific performance of the agreements for sale of two flats being Flat Nos.A3 and B2 and consequential reliefs. It appears that after the completion of the building, Defendant Nos.2 and 3 put in possession of the suit flats Nos.A2 and B3. Defendant No.2 is the wife of Defendant No.3. Hence, the plaintiffs' prayer for appointment of the Receiver in respect of the 2 flats on appropriate terms and conditions.

4. Heard learned Counsel for the Plaintiffs. Nobody appears for the Defendants, though served.

5. In view of the averments made in the affidavit in support of the Motion, I am of the view that this is a fit case where the Court Receiver must be appointed in respect of the two suit flats A-3 and B-2 in the

building the construction of which, according to the plaintiff, is complete. The Court Receiver, High Court, Bombay is therefore, directed to take formal possession of the suit premises. Defendant Nos.2 and 3 who are now in possession of the suit premises accordingly are appointed as agents of the Court Receiver. The Court Receiver shall enter into an agency agreement within six weeks from today. The Court Receiver shall obtain information from Defendant Nos.2 and 3 regarding the amounts paid by them in respect of the suit flats in order that it could be ascertained as to whether they are in fact bonafide purchasers.

5. Notice of Motion stands disposed of accordingly.